IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14970 of 2005
With
SPECIAL CIVIL APPLICATION No. 16194 of 2005
To
SPECIAL CIVIL APPLICATION No. 16196 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BANUDARSHAN CO-OPERATIVE HOUSING SOCI.LTD. - Petitioner(s)

Versus

VAPI MUNICIPALITY & 1 - Respondent(s)

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Appearance :
MR RS SANJANWALA for Petitioner No(s).: 1.
MR JB PARDIWALA for Respondent No(s).: 1.
Mr H L Jani, AGP for Respondent No(s).: 2.
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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA
Date : 23/08/2005

ORAL (COMMON) JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Leave to add order of Collector, Valsad dated 23.5.2005 granted.

Rule. Mr J R Pardiwala, learned Advocate waives service of rule for respondent no.1 and Mr H L Jani, learned AGP waives service of rule for respondent no.2. At the request of learned Advocates for the parties, the matters are taken up for final hearing today itself.

2. This group of petitions involves identical question of law to the effect whether the party who has received benefit under the Resolution passed by the respondent Municipality is required to be heard by the Collector exercising powers under the provisions of section 258(1) of the Gujarat Municipalities Act (for short, 'the Act'). Since common question of law is involved, they are heard together and disposed of by this common order.

3. It appears from the record of the petition that the petitioners are Co-operative Societies. They were served with show cause notice calling upon them to explain why the illegal/unauthorised construction put up by them should not be removed. It further appears that ultimately respondent no.1- Vapi Municipality regularized the construction subject to payment of penal amount prescribed by it. This decision was taken pursuant to Resolution No.3 (19) passed by respondent no.1-Municipality dated 20.10.2001. Later on, by subsequent Resolution dated 4.1.2002, the Chief Officer of the respondent No.1-Municipality passed resolution No.

4(1) resolving to recover penalty in respect of the unauthorised construction which was regularised earlier by it at the rate prescribed under the Gujarat Regularisation of Unauthorised Development Act, 2002 (for short, 'the GRUDA'). It further appears that respondent no.2, in the year, 2005, initiated suo motu proceedings under section 258(1) of the Act and by order dated 23.5.2005 set aside Resolution no. 4(1) passed by respondent no.1 on 20.10.2001. Copy of the said order produced by the learned Advocate for the petitioners now, is taken on record as Annexure 'A-1'. Thereafter, the petitioners have been called upon to remove the construction which was earlier declared as unauthorised but later on it was regularised by respondent no.1. Having been aggrieved by the said order, the petitioners have now approached this court by way of this petition.

4. We have heard Mr R S Sanjanwala, learned Advocate for the petitioners, Mr J B Pardiwala, learned Advocate for respondent no.1 and Mr H L Jani, learned AGP for respondent no.2 The sole contention that has been raised by Mr Sanjanwala is that the impugned order is bad in law because while passing the said order, respondent no.2 has violated the principles of natural justice. In his submission, since he petitioners have received the benefit under the Resolution passed by the respondent

Municipality, it was incumbent upon respondent no.2 to grant them proper hearing before taking any decision to set aside the said resolution because the same is directly and adversely affecting the petitioner. Mr Pardiwala has also submitted on the line of Mr Sanjanwala's submission. Mr H L Jani has supported the action of respondent no.2 and has submitted that respondent no.1 has no authority to regularise the construction by charging impact fee under the provisions of GRUDA, since these provisions are not applicable to area under Vapi Municipality. We have carefully considered the submissions made by the learned Advocates. We have also carefully gone through the contents of the petitions and the annexures thereto. It appears to us that when the petitioners have directly received the benefit of regularisation of their unauthorised construction pursuant to the resolution passed by respondent no.1 on 20.10.2001, it was absolutely necessary for respondent no.2 to grant them hearing before taking any decision to set aside the resolution since it is the petitioners who are likely to be adversely affected by such decision. Our view is sufficiently supported by the decision rendered by the learned Single Judge of this Court in the case of *Vasantlal Ramanlal Kansara v. Viramagam Municipality,* reported *in* 1995 (2) GLH 436. The learned Judge has considered this aspect in the said decision and has laid down as under:

"5. A Division Bench of this Court while construing the provision of section 258(1) of the said Act in the case of *H.H.Parmar v. Collector, Rakot and Anr.* Reported in XX (2) GLR p.97, was confronted with the question as to whether a third party who had received some benefit under the resolution of a Municipality was not entitled to be heard before the benefit which had accrued to him was withdrawn by the Collector making an order under section 258(1) of the said Act. The Division Bench held that if the Resolution affects the Municipality alone the question of hearing a third party would not arise, but, if a right has accrued in favour of a person under the Resolution, then the question whether that right had lawfully accrued or not cannot be decided against such a person unless he has been heard. On the facts and circumstances of the case it was held that if an order of appointment was issued and the appointee had taken charge of his office under the resolution, a right accrues to the appointee to hold that office and therefore it was necessary for the Collector to issue a notice to such a person before making any order under section 258(1) of the said Act. The Division Bench held that it was absolutely necessary for the Collector to give a reasonable opportunity to the concerned employee who had benefitted under the resolution, of being heard. Attention of this

court was drawn by the learned AGP Mr Raval to the decision of this court in the case of *Pratapsing Motising Parmar v. A A Rath, Collector, Jamnagar and Anr. Reported in IX G.L.T. 186* (Note 131). The oriental judgment has been called for from the office and it was noticed that by the decision dated 4.4.1972 rendered by the Hon'ble Mr Justice B J Diwan (as he then was) in SCA No.548 of 1972, the learned Single Judge while construing the question as to whether hearing was required to be given under section 258 of the said Act to a beneficiary of the resolution held as under:

> "Under the scheme of s.258, the only party which the collector is bound to hear is the Municipality... Looking to the scheme of section 258, what the Collector has to consider is, in the light of the facts of the case whether Resolution under consideration was lawful or not and for that purpose the only party entitled to be heard was the Municipality. The petitioner who was the beneficiary under this Resolution had no right of audience before the Collector, and, therefore, in my opinion there was no breach of principles of natural justice when the Collector passed the impugned order after hearing the Municipality only."

5A. The aforesaid ratio of the decision of the learned single Judge in SCA no.548 of 1972 is clearly in conflict with the ratio of the decision of the Division Bench rendered in the case of *H.H. Parmar* (supra) which lays down that in the case where benefit is given to a

> third party under the resolution of the Municipality it was incumbent on the part of the authority to give a reasonable opportunity of being heard to such a beneficiary. In this view of the matter, the decision of the learned single Judge in SCA 548 of 1972 in the case of Pratapsing (supra) is no longer a good law."

As can be seen from this decision that it has been rendered on the basis of an earlier decision rendered by Division Bench in the case of *H H Parmar. v. Collector, Rajkot & Anr, reported in 20(2) GLR 97.*

4.1. Yet in another decision of the learned Single Judge of this court in the case of *Maniben Navabhai & Ors. .v. State of Gujarat & Ors.*, reported in 2000(4) GCD 3222 same view has been taken. In para 3 of the said judgment it has been observed as under:

> "3. In my opinion, the point is concluded by a decision of this Court in *H H Parmar v. Collector, Rajkot & Anr, 1979 (2) GLR 97.* In that case, almost a similar question arose before the Division Bench. An appointment was made by the Municipality and the petitioner was serving. The Collector was of the view that decision taken by the Municipality was not in accordance with law and he, therefore, suspended the said resolution in exercise of power under section 258 of the Act. Before suspending the resolution, however, no notice was issued and principles of natural justice were not observed so far as the petitioner who was to be affected by suspension of

the resolution was concerned. The Division Bench held that the action of the Collector was contrary to law and violative of principles of natural justice, It was, therefore, set aside.

In my view, the point is directly covered by the decision in *H.H Parmar*. No doubt, H H Parmar was overruled by a Full Bench in *P.G. Chavda v. State, 1998 (2) GLR 1048,* but on a different point."

5. In view of the aforesaid decisions of this Court, it is very clear that while exercising powers under section 258(1) of the Act, respondent No.2 was required to grant hearing to the petitioners before taking any decision that was likely to hurt them the most. In the present case, that has not been done. Obviously therefore, the impugned order at Annexure 'A-1', has been passed in violation of the principles of natural justice. In our opinion, these matters are required to be remitted to respondent no.1 for reconsideration after granting proper opportunity of hearing to the petitioners and also to respondent no.1 Vapi Municipality. In view of the same, we quash and set aside the order of respondent no.2 dated 23.5.2005 which is at Annexure 'A-1' to the petition in all the petitions and the consequential order of the Chief Officer of respondent no.1 dated 27.6.2005 which is at Annexure 'A' and further direct that the cases be remanded back to respondent no. 2, i.e. Collector, Valsad for reconsideration after issuing proper notices to the petitioners as well as to respondent no.1 and

after affording them proper opportunity of hearing. Whatever the decision that may be taken by respondent no.2 in the matter shall be duly intimated to the petitioners as well as to respondent no.1.

For the reasons stated above, these petitions are allowed. Rule is made absolute.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp